May 2, 2005

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Name of Case: Jefferson Landmark, Inc.

Date of Filing: March 8, 2005

Case No.: TEE-0018

On March 8, 2005, Jefferson Landmark, Inc. (Jefferson) filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). The firm requests that it be relieved of the requirement to prepare and file the Energy Information Administration (EIA) Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report," for the year 2005. As explained below, we have determined that Jefferson's request should be denied.

I. Background

The DOE's Energy Information Administration (EIA) is authorized to collect, analyze, and disseminate energy data and other information.[1] The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress found that the lack of reliable information concerning the supply, demand, and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. This information is used to analyze trends within petroleum markets. Summaries of the information and the analyses are published by EIA in publications such as "Petroleum Marketing Monthly." This information is used by Congress and state governments to project trends and to formulate national and state energy policies.

In order to minimize the reporting burden, the EIA periodically selects a relatively small sample of companies to file Form

[1] 15 U.S.C. § 772(b); 42 U.S.C. § 7135(b).

EIA-782B[2] and permits reporting firms to rely on reasonable estimates.[3]

II. Exception Criteria

OHA has authority to grant exception relief where the reporting requirement causes a "special hardship, inequity, or unfair distribution of burdens."[4] Since all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms.

The following examples illustrate some of circumstances that may justify relief from the reporting requirement. We have granted exceptions where: the applicant's financial condition is so precarious that the additional burden of meeting the DOE reporting requirements threatens its continued viability;[5] the only person capable of preparing the report is ill and the firm cannot afford to hire outside help;[6] extreme or unusual circumstances disrupt a firm's activities;[7] a combination of factors render the reporting requirement an undue burden.[8]

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[2] Firms that account for over five percent of the sales of any particular product in a state are always included in the sample of firms required to file the form. A random sample of other firms is also selected. This random sample changes approximately every 24 to 30 months, but a firm may be reselected for subsequent samples. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

[3] Form EIA-782B stipulates that the firm must make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.

[4] 42 U.S.C. § 7194(a); *see* 10 C.F.R. § 1003.25(b)(2).

[5] *Mico Oil Co.*, 23 DOE ¶ 81,015 (1994) (firm lost one million dollars over previous three years); *Deaton Oil Co.*, 16 DOE ¶ 81,026 (1987) (firm in bankruptcy).

[6] *S&S Oil & Propane Co.*, 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); *Midstream Fuel Serv.*, 24 DOE ¶ 81,023 (three month extension of time to file reports granted when two office employees simultaneously on maternity leave); *Eastern Petroleum Corp.*, 14 DOE ¶ 81,011 (1986) (two months relief granted when computer operator broke wrist).

[7] *Little River Village Campground, Inc.*, 24 DOE ¶ 81,033 (1994) (five months relief because of flood); *Utilities Bd. of Citronelle-Gas*, 4 DOE ¶ 81,205 (1979) (hurricane); *Meier Oil Serv.*, 14 DOE ¶ 81,004 (1986) (three months where disruptions caused by installation of a new computer system left firm's records inaccessible).

[8] *Ward Oil Co.*, 24 DOE ¶ 81,002 (1994) (exception relief for 10 months was granted where personnel shortages, financial difficulties, and administrative problems resulted from the long illness and death of a partner).

On the other hand, when considering a request for exception relief, we must weigh the firm's difficulty in complying with the reporting requirement against the nation's need for reliable energy data. We have determined that mere inconvenience does not constitute a sufficient hardship to warrant relief.[9] Moreover, the fact that a firm is relatively small or that it has filed reports for a number of years does not alone constitute grounds for exception relief. If firms of all sizes, both large and small, are not included, the estimates and projections generated by the EIA's statistical sample will be unreliable.[10]

III. Jefferson's Application for Exception

Jefferson is a cooperative located in Bloomingdale, Ohio and was designated by EIA as a member of a sample group required to file Form EIA-782B on a monthly basis, beginning in January 2002. The firm maintains that completing the Form EIA-782B presents an undue burden. Jefferson states that it is a small firm, is very busy, and prepares the form using a pen and calculator. The firm also asserts that it was previously selected by EIA to complete Form EIA-782B for a four year period, from 1989 to 1993, and that six larger firms located in the same county as Jefferson have never been required to file Form EIA-782B.

After our preliminary review of the Application for Exception, we contacted Jefferson to give the firm an opportunity to discuss the request.[11] Jefferson's manager indicated that he believes it is unfair that the firm has been selected a second time to complete surveys. He emphasized that he only wants Jefferson to be treated in a manner similar to other firms in the Bloomingdale area.[12]

IV. Analysis

Jefferson has not demonstrated that the reporting requirements pose a "special hardship, inequity, or unfair distribution of burdens." Nothing in the record indicates that Jefferson is financially strained. Jefferson does not state how long it takes to complete the report and, therefore, we have no basis

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[9] ***Glenn W. Wagoner Oil Co.***, **16 DOE ¶ 81,024 (1987).**
[10] ***Mulgrew Oil Co.***, **20 DOE ¶ 81,009 (1990).**
[11] **Telephone Conversation between Caroline A. Smith, OHA, and Bob Sensibaugh, Jefferson Landmark, Inc. (March 30, 2005).**
[12] ***Id.***

to conclude that it is excessive.[13] The fact that Jefferson is busy and that its manager performs the relevant calculations by hand does not demonstrate that the time required to complete the form poses an undue burden. Form EIA-782B requires little more than the essential type of pricing, supply, and inventory data that is required to operate a business. The EIA estimates that it should normally take approximately two and one-half hours per month for a firm to fill out EIA-782B.[14] We note that the burden of this requirement on the firm's manager could be lessened by the use of estimates.[15]

Jefferson's principal argument -- that it has filed the form in the past and that other larger firms in the area have not -- does not provide the basis for an exception.[16] As discussed above, in order to obtain accurate information about the supply and demand for petroleum products, the EIA selects firms at random, may choose the same firm to participate in multiple EIA surveys, and requires data from firms of all sizes, not merely large firms. Firms are periodically rotated in and out of the EIA survey pool and those that are not chosen during one rotation may be selected to participate as part of a subsequent sample. Accordingly, the claim that Jefferson has filed the form in the past while others may not have, does not establish the existence of an inequity or unfair distribution of burdens that could justify relief.

As the foregoing indicates, the firm has not demonstrated that it meets the standards for exception request. Accordingly, we have determined that the exception request should be denied.

IT IS THEREFORE ORDERED THAT:

(1) The Application for Exception filed by Jefferson Landmark, Inc., Case No. TEE-0118, be, and hereby is denied.

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[13] *See, e.g. Haynes Oil Co.*, 21 DOE ¶ 81,002 (1992) (one day to complete form does not warrant exception); *Dell Oil Ltd.*, 13 DOE ¶ 81,009 (1985) (two days).
[14] *See* Section 10 of General Instructions to Form EIA- 782B.
[15] *See* Section 7 of the General Instructions to Form EIA-782B.
[16] *See Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990) (providing that if firms of all sizes, both large and small, are not included, the estimates and projections generated by the EIA's statistical sample will be unreliable); *see also Taylor Oil Co.*, 27 DOE ¶ 81,010 (2000) (relief denied where the firm argued that the requirements were unduly burdensome because it had participated in filing the reports for many years).

(2) Administrative review of this Decision and Order may be sought by any person who is aggrieved or adversely affected by the denial of exception relief. Such review shall be commenced by filing a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 385, Subpart J.

George B. Breznay
Director
Office of Hearings and Appeals

Date: May 2, 2005